

SUPREME COURT OF MISSOURI

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| M.T AND S.T, |) | |
| Respondents, |) | |
| v. |) | |
| |) | Supreme Court No. 87291 |
| |) | |
| CRAIG LENTZ |) | |
| Appellant, |) | |

**IN THE JACKSON COUNTY CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 41
Commissioner John Payne, Presiding**

| | | |
|-------------------------------|---|-------------------------------|
| In the Interest of: |) | |
| |) | |
| N.L.B, DOB: 12/12/2004 |) | Cause No. 0516-FC01293 |
| Minor Child. |) | |

BRIEF OF APPELLANT CRAIG LENTZ

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JURISDICTIONAL STATEMENT

This appeal arises out of a judgment order by the Jackson County Circuit Court, Family Court Division.

This action is one involving a question of whether the termination of parental rights of an unwed father for failure to register with the putative father registry or file an action to establish paternity within the fifteen (15) day time period after the child's birth as specified in Mo. Rev. Stat. § 453.030(3) violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and hence involves the validity of a statute of the constitution of this state.

STATEMENT OF FACTS

References to the legal file will be set forth as "L.F.#." References to the transcript will be set forth as "Tr.#."

The child was born on December 12, 2004 in Cape Girardeau, Missouri, L.F.10, to Ibbaanika Bond, the natural mother, Tr.94. Appellant, Craig Lentz, is the child's natural father. L.F.18. Mr. Lentz was not married to the natural mother at any time. Tr.13. However, DNA test results show Mr. Lentz as the child's natural father. L.F.31. Mr. Lentz financially and emotionally supported the child's natural mother before and after the child's birth. L.F.47. Prior to the child's birth,

Mr. Lentz traveled from Kansas City to stay in Cape Girardeau, where the mother and child continued to reside immediately after the birth. Tr. 74. Mr. Lentz was present at the hospital and participated in the birth of the child. Tr.29. Mr. Lentz is listed as the child's father on the birth certificate. L.F.22.

The child was placed in foster care by the natural mother. Tr.127. Mr. Lentz and the natural mother took the child out of foster care on January 20, 2005. Tr.127. Mr. Lentz signed a Reconsideration of Adoption Plan by Birth Parents document on January 20, 2005. Tr.59. Mr. Lentz and the natural mother each paid half of the \$300 foster care costs. Tr. 116.

On January 20, 2005 Mr. Lentz drove the natural mother and the child from Cape Girardeau to Kansas City. Tr.65. Mr. Lentz took the child and the natural mother to the home of Randall and Eileen Baker. Tr.95. The child stayed with the Bakers from January 20, 2005 to February 25, 2005. Tr.128. Mr. Lentz and the natural mother visited the child at the Bakers' home on February 24, 2005. Tr.89.

On February 15, 2005 Respondents filed a Petition for Transfer of Custody and Adoption with the Family Court Division of the Circuit Court of Jackson County. Tr.2. On February 25, 2005 Respondents filed a First Amended Petition for Transfer of Custody and Adoption. L.F.10. Respondents' petition claimed that the child's natural father was unknown. L.F.11. At a hearing on February 25, 2005, the natural mother consented to the adoption. Tr. 95. Mr. Lentz was not a

party to the hearing on February 25, 2005. Tr.70. The Circuit Court granted temporary care and custody of the child to Respondents. Tr.2.

Mr. Lentz registered with the Putative Father Registry on March 2, 2005 pursuant to Mo. Rev. Stat. §210.823. Tr.8. Mr. Lentz filed his Motion to Intervene on March 24, 2005, L.F.18, which was sustained by the Court on March 28, 2005, L.F.23. Mr. Lentz filed an Answer to Respondents Petition for Transfer of Custody and Adoption on April 28, 2005. L.F.28. On June 16, 2005, Mr. Lentz filed his Petition for Declaration of Paternity, L.F.37, along with his Affidavit of Acknowledgment of Paternity, L.F.57. Mr. Lentz continued to provide support for the child by sending gifts and money to Respondents. Tr.196.

On August 25, 2005 Mr. Lentz filed a Motion for Court Order for DNA Testing. L.F.75. On September 19, 2005 Mr. Lentz filed a Motion for Change of Judge, L.F.248, and a Motion for Judgment and Rehearing on Petitioner's Motion to Dismiss and Motion for Rehearing on Motion for Court Ordered DNA Testing, L.F.186. On September 26, 2005 Mr. Lentz filed a Motion for Continuance. L.F.260.

At trial on September 29, 2005 Commissioner Payne denied Mr. Lentz's pending motions without notice and without hearing. Tr.3. Mr. Lentz's Motion for Change of Judge was not heard before trial, Tr. 5, and was subsequently denied on September 30, 2005, Tr.3. Commissioner Payne granted Respondents' oral

motion to bifurcate the issues, limiting the presentation of evidence specifically related to whether Mr. Lentz's consent was required for the adoption under Mo. Rev. Stat. § 453.030, over the objection of Mr. Lentz's counsel that it was a violation of his Constitutional rights. Tr.6.

On October 19, 2005 the Circuit Court granted Respondents' Petition for Adoption of the child. L.F.271. The Circuit Court found that under Mo. Rev. Stat. § 210.822 Mr. Lentz is not presumed father because he was not married to the natural mother. L.F.275. The Circuit Court also found that under Mo. Rev. Stat. § 453.030 Mr. Lentz's consent is not required for failure to register or pursue a paternity action within the fifteen days of the child's birth. L.F.275.

The Court found that the requirement to register with a putative father registry has been deemed constitutional by the United States Supreme Court, L.F.278, although an unwed father who demonstrates a commitment to the responsibilities of parenthood is entitled to substantial protection under the Due Process Clause. L.F.278. However, the Circuit Court did not allow Mr. Lentz to present evidence of his commitment to the responsibilities of parenthood. T.R.30. The Circuit Court also found that Mr. Lentz had abandoned the child under Mo. Rev. Stat. § 453.040(7). L.F.280. Mr. Lentz filed a Motion for Rehearing on Judgment on November 3, 2005, L.F.282, which was subsequently denied on November 8, 2005, L.F.300.

POINTS RELIED ON

I. The Circuit Court erred in holding that Mo. Rev. Stat. § 453.030, which specifies an unwed father has to act within fifteen days of the child's birth or lose the right to withhold consent of the adoption of his child, is a controlling statute, because the statute infringes on the liberty interest of an unwed father upon a showing of parental care and concern, which is protected under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that the statute allows for the termination of parental rights without a hearing on the unwed father's protected liberty interest.

Lehr v. Robertson, 463 U.S. 248 (1983); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978); U.S. Const. amend. XIV; Mo. Const. of 1875, art. I, §§ 2, 10 (2005); Mo. Rev. Stat. § 453.030 (2005).

II. The Circuit Court erred in holding that Mo. Rev. Stat. § 453.030 is a controlling statute because the statute treats the rights of an unwed father to withhold consent differently than other parent's rights to withhold consent, in that the statute violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Caban v. Mohammed, 441 U.S. 380 (1979); *Lehr v. Robertson*, 463 U.S. 248 (1983); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989); U.S. Const. amend. XIV; Mo. Const. of 1875, art. I, § 2 (2005); Mo. Rev. Stat. § 210.822 (2005); Mo. Rev. Stat. § 453.030 (2005).

III. The Circuit Court erred in limiting the presentation of evidence to the application of Mo. Rev. Stat. § 453.030 because non-compliance with the Putative Father Registry is only a factor to be considered in termination of parental rights, in that the father's name on the child's birth certificate, a signed acknowledgment of paternity and a DNA test are all prima facie evidence of paternity under Mo. Rev. Stat. Chapter 210 which entitles a father to a hearing on parental fitness before termination of parental rights.

In the Interest of C.J.G., 75 S.W.3d 794 (Mo. Ct. App. W.D. 2002); *Michael H. v. Gerald D.*, 491 U.S. 110 (1989); *Quilloin v. Walcott*, 434 U.S. 246 (1978); Mo. Rev. Stat. § 193.085 (2005); Mo. Rev. Stat. § 193.215 (2005); Mo. Rev. Stat. § 210.218 (2005); Mo. Rev. Stat. § 210.219 (2005); Mo. Rev. Stat. § 210.823 (2005); Mo. Rev. Stat. § 210.836 (2005); Mo. Rev. Stat. § 453.030 (2005).

IV. The Circuit Court erred in the determination that the father abandoned the child under Mo. Rev. Stat. § 453.040, because a finding of abandonment requires voluntary and intentional severance of the parent-child relationship, in that the father did not abandon the child, but continued to have a relationship with the child including visitation and financial support.

In the Interest of C.J.G., 75 S.W.3d 794 (Mo. Ct. App. W.D. 2002); *In the Interest of Baby Girl W.*, 728 S.W.2d 545 (Mo. Ct. App. W.D. 1987); *In the Interest of P.G.M.*, 149 S.W.3d 507 (Mo. Ct. App. S.D. 2004); Mo. Rev. Stat. § 453.040 (2005).

ARGUMENT

I. The Circuit Court erred in holding that Mo. Rev. Stat. § 453.030, which specifies an unwed father has to act within fifteen days of the child’s birth or lose the right to withhold consent of the adoption of his child, is a controlling statute, because the statute infringes on the liberty interest of an unwed father upon a showing of parental care and concern, which is protected under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, in that the statute allows for the termination of parental rights without a hearing on the unwed father’s protected liberty interest.

This case deals with the rights of an unwed father to withhold his consent to the adoption of his child under Missouri law. Adoption is essentially a termination of parental rights of the natural parents. Shawn R. McCarver, *Adoptions in Missouri after House Bill 343*, 54 J. Mo. B. 74 (1998). Termination of the parent-child relationship “must be accomplished by meeting the requisites of the Due Process Clause” of the United States Constitution. *Santosky v. Kramer*, 455 U.S. 745, 752 (1982). The Due Process Clause of the Fourteenth Amendment and Art. I, §§ 2 and 10 of the Missouri Constitution provide that no person shall be deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV; Mo. Const. of 1875, art. I, §§ 2, 10 (2005).

It has “long [been] recognized that the [Fourteenth] Amendment’s Due Process Clause, like its Fifth Amendment counterpart, ‘guarantees more than fair process.’” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (citing *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997)). The Due Process Clause also includes a substantive component that protects those interests that are “so rooted in the traditions and conscience of our people...” *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989). An examination of the state’s interest and established procedures as well as the private interests affected by the state’s action will determine what protection due process of the law requires. *Stanley v. Illinois*, 405 U.S. 645, 650 (1972). Due process analysis begins with a “determination of the precise nature of the private interest that is threatened by the State.” *Lehr v. Robertson*, 463 U.S. 248, 256 (1983). “The private interest here, that of a man in the child he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection.” *Stanley v. Illinois*, 405 U.S. at 651.

Mo. Rev. Stat § 453.030.3 states that written consent to adoption is only required from the man who is:

- (a) is presumed to be the father pursuant to the subdivision (1), (2), or (3) of subsection 1 of Mo. Rev. Stat. § 210.822; or
- (b) has filed an action to establish his paternity in a court of competent jurisdiction *no later than fifteen days after the birth of the*

child and has served a copy of the petition on the mother in accordance with Mo. Rev. Stat § 506.100; or

(c) has filed with the putative father registry pursuant to Mo. Rev. Stat. § 192.016, a notice of intent to claim paternity or an acknowledgment of paternity either *prior to or within fifteen days after the child's birth*, and has filed an action to establish paternity in a court of competent jurisdiction *no later than fifteen days after the birth of the child*.

Mo. Rev. Stat. § 453.030 (2005) (Emphasis added). Consent to adoption is not required of any father who does not fall into one of the three categories listed in Mo. Rev. Stat. § 453.030. The law effectively serves to terminate the parental rights of a parent who does not fit into one of the specified categories and whose consent is not required under the statute. An unwed father whose consent is not required by statute is not afforded a hearing on parental fitness before his rights and liberty interest in a parent-child relationship are terminated.

The parent-child relationship is “among the first that this Court acknowledged in its cases defining the ‘liberty’ protected by the Constitution.” *Michael H*, 491 U.S. at 141-142 (Brennan, J., dissenting). “[T]he interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel*, 530 U.S. at 65. The United States Supreme Court has held that the parent-child relationship is “sufficiently vital to merit constitutional protection in appropriate cases.” *Lehr*,

463 U.S. at 256. “[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.” *Michael H*, 491 U.S. at 124.

Stemming from the traditional parent-child liberty interest, an unwed father also has a constitutionally protected liberty interest in his child under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Stanley*, 405 U.S. 645. The United States Supreme Court stated that “the rights to conceive and raise one’s children have been deemed essential.” *Id.* at 651. An unwed father has a “cognizable and substantial” interest in retaining custody of his children. *Id.* at 652.

The Supreme Court further expounded upon this interest and found that an unwed father’s liberty interest is correlated to the parental responsibilities the father had undertaken. *Quilloin v Walcott*, 434 US 246 (1978). The “mere existence of a biological link does not merit equivalent constitutional protection.” *Lehr*, 463 U.S. at 261. “[A]lthough an unwed father’s biological link to his child does not, in and of itself, guarantee him a constitutional stake in his relationship with that child, such a link combined with a substantial parent-child relationship will do so.” *Michael H*, 491 U.S. at 142 (Brennan, J., dissenting).

An unwed father who has “demonstrated a sufficient commitment to his paternity by way of personal, financial, or custodial responsibilities has a protected

liberty interest in a relationship with his child.” *Michael H*, 491 U.S. at 157-158 (White, J., dissenting). An unwed father’s liberty interest in his child requires substantial protection under the Due Process Clause upon a showing of the father’s “commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child” *Lehr*, 463 U.S. at 261. If a father “accepts some measure of responsibility for the child’s future, he may enjoy the blessings of the parent-child relationship” *Id.* at 262.

The Missouri Constitution also protects the liberty interest in a parent-child relationship. This Court has previously held that “on a finding of such concern and capacity, the father is then cloaked with the benefit of the presumption of parental fitness essentially the same as that enjoyed by other parents.” *Missouri ex rel J.D.S. v. Edwards*, 574 S.W.2d 405, 409 (Mo. 1978). The Missouri Constitution, art. I, §§ 2 and 10 require that the same “presumption of fitness afforded married fathers in parental termination proceedings be afforded to natural fathers after a reasonable showing of fatherly concern in such cases” *Id.* at 409.

The parent-child relationship between an unwed father and his child, upon a showing of parental commitment and concern, is a constitutionally protected liberty interest under the Due Process Clause. The state’s action in deprivation of this interest must be supported by a legitimate state interest and the “means used to achieve a state’s legitimate interest must be constitutionally defensible.” *Stanley*,

405 U.S. at 652. The state’s adoption law must “accommodate both the interests of the biological fathers in their children and the children’s interests in prompt and certain adoption” *Lehr*, 463 U.S. at 263.

Missouri has an important state interest in promoting the adoption of children. The state is interested in permanently placing children with adoptive parents to reduce the burden on the state to care for such children. *McCarver*, 54 J.Mo.B. at 78. Missouri is also concerned with quick and final adoptions and having clear rules that protect adoption decrees from collateral attack. *Id.* at 78.

The means in which Missouri achieves quick and final adoptions, by terminating an unwed father’s parental rights, is to require the consent of unwed fathers only in certain circumstances. Under Mo. Rev. Stat. § 453.030 the consent of only three categories of fathers is required for adoption. Missouri requires the father to either; be married to the mother pursuant to Mo. Rev. Stat. § 210.822; file a paternity action within fifteen days after the birth of the child; or register with the putative father registry within fifteen days after the birth of the child. Mo. Rev. Stat. § 453.030 (2005).

An adoption law that is “likely to omit many responsible fathers” from the consent requirement may be procedurally inadequate under the Fourteenth Amendment. *Lehr*, 463 U.S. at 264. In that case, the United States Supreme Court upheld New York’s statute requiring unwed fathers to register with the

putative father registry in order to give notice to those fathers of adoption proceedings. *Id.* at 248. The New York statute at issue included several categories of possible fathers entitled to notice of adoption including those whose names are listed on the putative father registry and

“those who have been adjudicated to be the father, those who have been identified as the father on the child’s birth certificate, those who live openly with the child and the child’s mother and who hold themselves out to be the father, those who have been identified as the father by the mother in a sworn written statement, and those who were married to the child’s mother before the child was six months old.” *Id.* at 251.

New York’s statutory scheme “automatically provides notice to seven categories of putative fathers who are likely to have assumed some responsibility for the care of their natural children.” *Id.* at 263. The statute at issue in *Lehr v. Robertson* was found not to be unconstitutional because the statute was broad enough to cover many possible types of fathers who could have a protected parent-child relationship. The statute did not infringe on the liberty interest of unwed fathers because it included categories that would likely include an unwed father who had demonstrated a commitment to his child. *Id.* at 263.

In contrast, Missouri’s statute provides protection for three types of fathers. Mo. Rev. Stat. § 453.030 provides protection only to unwed fathers who have acted as provided in the statute within fifteen days of the child’s birth. Missouri’s statute does not include other categories of fathers who are likely to have assumed

responsibility for their children. The statute does not include categories such as fathers who have signed a paternity affidavit or those who are listed on the birth certificate. Mo. Rev. Stat. § 453.030 does not include the categories of possible fathers as were included in the constitutionally defensible New York statute.

The state's action in strictly applying Mo. Rev. Stat. § 453.030, to not require consent of an unwed father who has otherwise shown commitment and concern for his child, infringes on the constitutionally protected liberty interest of an unwed father. Due process requires that state laws must not be "inflexible procedures universally applicable to every imaginable situation." *Stanley*, 405 US at 650 (Citing *Cafeteria and Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961)). Missouri's statutory scheme is rigid and does not protect the interests of unwed fathers who fail to register within fifteen days but who have otherwise taken on parental responsibility.

Mo. Rev. Stat. § 453.030 affords an unwed father only fifteen days after the birth of the child in which to act or lose the right to withhold consent to the adoption of his child. Fifteen days is a small window that doesn't afford the scope of protection the Due Process Clause requires of a protected liberty interest. The statute acts as an inflexible bar to the rights of an unwed father who has demonstrated care and concern for his child. Under the statute, an unwed father will lose his right to withhold consent to adoption of his child for failure to register

within fifteen days; effectively terminating the parent-child relationship of a father who has otherwise shown care and concern for his child.

Mr. Lentz has a constitutionally protected liberty interest in the child as his natural father that warrants the same presumption of fitness and due process protection afforded other fathers. Mr. Lentz financially supported the natural mother before and after the child's birth. L.F.47. Mr. Lentz was physically present at the hospital on December 12, 2004. Tr.29. Mr. Lentz stayed in Cape Girardeau awaiting the child's birth and transported the child and his natural mother back to Kansas City on January 20, 2005. Tr. 74, 127. Mr. Lentz visited with the child prior to the Court's Order of Temporary Custody. Tr.89. Mr. Lentz continued to demonstrate his parental commitment to the child by sending gifts and financial support for the child to Respondents throughout these proceedings. Tr.196.

The narrowly drawn statutory means with which Missouri seeks to enforce the state's interest in adoptions infringe upon the Due Process rights of an unwed father who has otherwise shown care and concern for his child. Missouri's statute is likely to omit many responsible fathers, like Mr. Lentz, because the fathers aren't married to the mother or didn't take legal action within the brief fifteen day time frame after the child's birth. Under the Due Process Clause of the Fourteenth Amendment and Art. I, §§ 2 and 10 of the Missouri Constitution Mr. Lentz is entitled to substantial protection of his liberty interest in the child.

II. The Circuit Court erred in holding that Mo. Rev. Stat. § 453.030 is a controlling statute because the statute treats the rights of an unwed father to withhold consent differently than other parent's rights to withhold consent, in that the statute violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The United States Constitution and the Missouri Constitution provide equal protection to both men and women. U.S. Const. amend. XIV; Mo. Const. of 1875, art. I, § 2 (2005). In a case of termination of parental rights the Supreme Court of the United States has held that “maternal and paternal roles are not invariably different in importance.” *Caban v. Mohammed*, 441 U.S. 380, 389 (1979). Gender-based distinctions “must serve important governmental objectives and must be substantially related to achievement of those objectives in order to withstand judicial scrutiny under the Equal Protection Clause.” *Id.* at 388. The state “may not subject men and women to disparate treatment when there is no substantial relation between the disparity and an important state purpose.” *Lehr*, 463 U.S. at 266.

Missouri's adoption statute guarantees certain parents the right to withhold consent to adoption of a child. Mo. Rev. Stat. § 453.030 provides that consent from the mother of the child is always required while consent of the father is required only in three instances; when the father is married to the mother pursuant

to Mo. Rev. Stat. § 210.822, when the father filed a paternity action within fifteen days after the birth of the child, or when the father registered with the putative father registry within fifteen days after the birth of the child. The mother is “always within that favored class, but only certain fathers are included.” *Lehr*, 463 U.S. at 266.

The Equal Protection Clause does not prevent a state from bestowing two parents different legal rights “if one parent has established a custodial relationship with the child and the other parent has either abandoned or never established a relationship” *Lehr*, 463 U.S. at 267-8. However, “where the mother and father are in fact similarly situated with regard to their relationship with the child” a statute that treats them differently will not stand under the Equal Protection Clause. *Id.* at 267.

Missouri’s statute does not treat similarly situated mothers and father the same. An unwed mother is afforded higher protection of her parental interest than an unwed father. An unwed father who has an established relationship with the child and provided support for the child, but who did not file a paternity action with the court or file with the putative father registry within fifteen days of the child’s birth has lost his right to withhold consent to adoption. An unwed father’s parental rights may be terminated against his wishes while an unwed mother has the right to withhold consent regardless of her relationship or support of the child.

Mo. Rev. Stat. § 453.030 also does not treat married fathers and unwed fathers the same. Under Subsection 3(2)(a) of Mo. Rev. Stat. § 453.030, a father who is married or attempted to marry the natural mother is afforded the right to withhold consent to adoption regardless of that father's relationship or support of the child. However an unwed father who has taken on parental responsibilities is not afforded the right to withhold consent unless he has acted within the fifteen day time period specified in Mo. Rev. Stat. § 453.030.

The statute discriminates against unwed fathers based on their status as unmarried persons. “[M]arriage is not decisive in answering the question whether the Constitution protects the parental relationship under consideration.” *Michael H*, 491 U.S. at 144 (Brennan, J., dissenting). Under Mo. Rev. Stat. § 453.030, marriage is a determining factor in parental rights because married fathers are given more protection of their parental rights than unwed fathers.

The state of Missouri is interested in speed and definiteness of adoption proceedings. *McCarver*, 54 J. Mo. B. at 78. However, “where the father has established a substantial relationship with the child and has admitted his paternity, a State should have no difficulty in identifying the father even of children born out of wedlock.” *Caban*, 441 U.S. at 393. “[T]his undifferentiated distinction between unwed mothers and unwed father, applicable in all circumstances where adoption of a child of theirs is at issue, does not bear a substantial relationship to the State’s

asserted interests.” *Id.* at 394. Missouri’s statute holds unwed fathers to a higher standard than married fathers and mothers. Mo. Rev. Stat. § 453.030 does not effectively achieve the State’s goal of quick and final adoptions.

There is no justification for the disparate treatment of Mr. Lentz, an unwed father who has demonstrated care and concern for his child. Missouri’s interests in adoption are not served by requiring the consent of mothers and married fathers but not the consent of unwed fathers upon a showing of care and concern. Like the New York statute at issue in *Caban v. Mohammed*, the effect of Mo. Rev. Stat. § 453.030 is to “discriminate against unwed fathers even when their identity is known and they have manifested a significant paternal interest in the child.” *Caban*, 441 U.S. at 394.

Mr. Lentz has demonstrated his care and concern for the child by taking on parental responsibilities. Mr. Lentz was present with the natural mother at the time of the child’s birth. Mr. Lentz provided financial and emotional support to the child and the natural mother. Mr. Lentz continued to have contact with the child while he was in foster care. Mr. Lentz was known to be the child’s natural father as he participated in The child’s life. Missouri’s interest in speedy adoptions is not served by discriminating against Mr. Lentz because he did not act within the short fifteen day time period specified in Mo. Rev. Stat. § 453.030.

III. The Circuit Court erred in limiting the presentation of evidence to the application of Mo. Rev. Stat. § 453.030 because non-compliance with the Putative Father Registry is only a factor to be considered in termination of parental rights, in that the father's name on the child's birth certificate, a signed acknowledgment of paternity and a DNA test are all prima facie evidence of paternity under Mo. Rev. Stat. Chapter 210 which entitles a father to a hearing on parental fitness before termination of parental rights.

The Circuit Court erroneously applied the law by limiting the presentation of evidence in the adoption proceedings to the application of Mo. Rev. Stat. § 452.030. The termination of parental rights can be reversed if it is “not supported by substantial evidence, it is against the weight of the evidence or it erroneously declares or misapplies the law” *In re adoption of H.M.C.*, 11 SW3d 81, 86 (Mo. Ct. App. W.D. 2000).

Missouri's adoption statute provides that the consent of an unwed father is not required when the father did not take legal action to establish his paternity or register with the putative father registry within fifteen days of the child's birth. Mo. Rev. Stat. § 452.030 (2005). Missouri's classification of the consent required for adoption creates an irrebuttable presumption that an unwed father who does not register with the putative father registry or file a paternity action within fifteen days of the child's birth has no parental rights to the child. The Supreme Court of

the United States has struck down as illegitimate certain “irrebuttable presumptions.” *Michael H.*, 491 U.S. at 120-121. “Irrebuttable presumption” cases must be ultimately be analyzed as calling into question the adequacy of the “fit” between the classification and the policy that the classification serves. *Id.* at 120-121.

The United States Supreme Court stated that an unwed father has a right to a hearing on parental fitness before the rights to his child are terminated. *Stanley*, 405 U.S. at 649. In *Quilloin v Walcott*, an unwed father did not comply with New York’s legitimization statute which would have required his consent to the adoption of his child. 434 US 246. However, the New York Court in that case gave the father a full hearing on his parental fitness, despite non-compliance with the legitimization statute, before ultimately terminating his parental rights upon a finding that he had not established a commitment to having a relationship with the child. *Quilloin*, 434 US 246. That case demonstrates that non-compliance with the state’s legitimization statute or putative father registry is not an automatic termination of an unwed father’s parental rights and an unwed father is entitled to full hearing on parental fitness.

Missouri courts have found that non-compliance is not an automatic termination of parental rights. The Missouri Court of Appeals, Western District has held that “failure to follow registry procedure does not extinguish (a father’s)

option to later assert paternity.” *In the Interest of C.J.G.*, 75 S.W.3d 794, 803 (Mo. Ct. App. W.D. 2002). Non-compliance with the registry is a factor the court should consider in exercising its discretion. *Id.* at 803. Strict application of Mo. Rev. Stat. § 453.030 would deny an unwed father his right to a hearing because he failed to comply with the statute within fifteen days of the child’s birth.

Although non-compliance with the putative father registry is a factor in termination and adopting proceedings, establishment of a parent-child relationship must also be considered by the court. A father is entitled to present evidence that will allow him to defend against a termination of parental rights and the adoption of his child. *C.J.G.*, 75 S.W.3d at 803. A parent and child relationship extends equally to every child and every parent, regardless of the marital status of the parent. Mo. Rev. Stat. § 210.818 (2005). A putative father may establish that a parent-child relationship exists based on the provisions in §§ 210.817-210.852. Mo. Rev. Stat. § 210.819 (2005).

Evidence relating to paternity may include: evidence of sexual intercourse during the possible time of conception, blood test results, medical or anthropological evidence, and all other evidence relevant to the issue of paternity. Mo. Rev. Stat. § 210.836. This statute allows for the presentation of a broad range of evidence to defend against the adoption of a child that Mo. Rev. Stat. § 453.030 does not provide for. The types of evidence that an alleged father has a right to

present under Mo. Rev. Stat. § 210.836 include the birth certificate of the child and the father's signed acknowledgment of paternity.

The birth certificate of the child listing the name of the alleged father as the child's father is relevant evidence of paternity. Under Missouri law, the name of the father of a child born to unmarried parents shall be entered on the birth certificate if a signed acknowledgment of paternity is completed. Mo. Rev. Stat. § 193.085.7 (2005). The child's birth certificate can also be amended to include an unwed father upon written request from both parents and a signed acknowledgment of paternity. Mo. Rev. Stat. § 193.215.6 (2005).

The acknowledgment of paternity is considered a legal finding of paternity under Missouri vital statistics statutes. Mo. Rev. Stat. § 193.085 (2005). Missouri child protection law also states that a signed acknowledgment of paternity "shall be considered a legal finding of paternity." Mo. Rev. Stat. § 210.823 (2005). A legal finding of paternity entitles the father to the rights and responsibilities of a parent-child relationship, Mo. Rev. Stat. § 193.215.6 including the right to a proper hearing on parental fitness before parental rights are terminated.

Pursuant to Chapter 210, Mr. Lentz has established a parent-child relationship with his child. Mr. Lentz signed and filed an affidavit acknowledging his paternity of the child. The child's birth certificate was amended pursuant to Mo. Rev. Stat. § 193.215 to reflect both the natural mother and Mr. Lentz as the

child's parents. The parent-child relationship entitles Mr. Lentz to a proper hearing where he may present evidence of his commitment to the responsibilities of parenting before determining his parental fitness or terminating his parental rights.

The provisions of Chapter 210 state that a father may present evidence of paternity including blood tests and statistical probability of paternity. Mo. Rev. Stat. § 210.836 (2005). The Western District held that "(DNA) testing can be of evidentiary value in termination or adoption proceedings." *C.J.G.*, 75 S.W.3d at 803. Mr. Lentz petitioned the Circuit Court to order DNA testing to establish his paternity on August 25, 2005. The Circuit Court denied Mr. Lentz's motion on September 13, 2005. Mr. Lentz had a private DNA test conducted by Genex Diagnostics that concluded with a 99.9999% probability that Mr. Lentz was the natural father. Mr. Lentz has a right to present DNA evidence of his paternity to defend against the adoption of his child.

By limiting the presentation of evidence to the issue of required consent under Mo. Rev. Stat. § 453.030, the Circuit Court did not give Mr. Lentz a full hearing before terminating his parental rights. The Circuit Court found that Mr. Lentz had not complied with statute within the fifteen day following the child's birth under Mo. Rev. Stat. § 453.030 and thereafter did not recognize him as the father and effectively terminated his parental rights. The Circuit Court did not

consider non-compliance with Mo. Rev. Stat. § 453.030 as one of many factors in the termination/adoption proceedings, but as the only factor. Court failed to give the proper weight to the child's birth certificate and acknowledgment of paternity as evidence of Mr. Lentz's parent-child relationship with the child. Court arbitrarily assumed the birth certificate had no bearing on the termination of Mr. Lentz's parental rights and disregarded the evidence.

Because the Circuit Court limited the presentation of evidence to the issue of compliance, Mo. Rev. Stat. § 453.030 served an automatic termination of Mr. Lentz's parental rights. The Circuit Court erred by not allowing Mr. Lentz to present relevant evidence of paternity to defend against the adoption of his child. The Circuit Court erred in not considering the child's birth certificate, the signed acknowledgment of paternity, or the DNA evidence before terminating Mr. Lentz's parental rights. The Circuit Court used Mr. Lentz's failure to register with the putative father registry or file an action to establish his paternity within fifteen days after the child's birth to strip him of any parental rights he had regarding his son.

Missouri's vital statistics and child protection statutes are in conflict with the adoption statutes. The vital statistics and child protection statutes provide that an unwed father has parental rights and obligations by signing an acknowledgment of paternity and by being named as the father on the child's birth certificate. Mo. Rev. Stat. §§ 193.085, 210.823 (2005). However, the adoption statutes state that

an unwed father has no right to his child unless he registers with the putative father registry or files an action to establish paternity within 15 days of the child's birth. Mo. Rev. Stat. § 453.030 (2005).

Under the adoption statute, an unwed father who is named on the child's birth certificate and who has signed an acknowledgment of paternity but who has not done so within fifteen days of the child's birth forfeits his right to withhold his consent to adoption and his parental rights can be terminated. The adoption statute is in direct conflict with the child protection laws that hold a father legally responsible for a child by signing an acknowledgment of paternity. A conflict in the statutes should be viewed in light most favorable to the fundamental rights of the father.

Mr. Lentz has established himself as the legal father by completing a signed acknowledgment of paternity and amending the child's birth certificate to name him as the father. Under Missouri child protection law, Mr. Lentz is legally bound to the rights and responsibilities of the child, including a support obligation. However, under Missouri adoption law, the legal rights and responsibilities that arise from signing an acknowledgment of paternity are not enough to protect Mr. Lentz's interest in preventing the adoption of his child and the termination his parental rights. The conflict in the statute must weigh in favor of protecting Mr. Lentz's liberty interest in his child.

IV. The Circuit Court erred in the determination that the father abandoned the child under Mo. Rev. Stat. § 453.040, because a finding of abandonment requires voluntary and intentional severance of the parent-child relationship, in that the father did not abandon the child, but continued to have a relationship with the child including visitation and financial support.

The Circuit Court erred in finding that Mr. Lentz had abandoned his child for a period of at least sixty days immediately prior to the filing of Respondents' amended petition for adoption because the finding is against the weight of the evidence. The termination of parental rights can be reversed if it is "not supported by substantial evidence, it is against the weight of the evidence or it erroneously declares or misapplies the law." *In re adoption of H.M.C.*, 11 SW3d 81, 86 (Mo. Ct. App. W.D., 2000).

Pursuant to Mo. Rev. Stat. § 452.040(7), consent to adoption of a child is not required of a parent who has willfully abandoned the child for a period of sixty days preceding a petition for adoption of a child under one year of age. The Western District has defined abandonment as "the voluntary relinquishment of child custody with the intention the severance be of a permanent nature." *C.J.G.*, 75 S.W.3d at 797. Abandonment implies a "willful positive act such as deserting the child." *Interest of Baby Girl W.*, 728 SW2d 545, 549 (Mo. Ct. App. W.D. 1987).

In determining whether a parent has abandoned the child “evidence of a parent’s conduct, both before and after the statutory period of abandonment, may be considered” *In the Interest of P.G.M.*, 149 SW3d 507, 514 (Mo. Ct. App. S.D. 2004). To prove abandonment “there must be evidence which shows the accessibility of the child for purposes of visitation and communication.” *C.J.G.*, 75 S.W.3d at 801. A parent “should be reasonably permitted to obtain and present evidence that will allow him to defend against a termination of his parental rights and the adoption of his child.” *Id.* at 803.

The record does not support a finding that Mr. Lentz abandoned the child for the sixty days prior to the filing of Respondents’ petition. The record reveals that Mr. Lentz did not intentionally withhold care and support from his child, but in fact provided support before and after the child’s birth. T.F. 47. The child was born in Cape Girardeau on December 12, 2004. Tr. 94. Mr. Lentz was present for the birth and then returned to his home in Kansas City. Tr. 29. Mr. Lentz returned to Cape Girardeau on January 20, 2005 to transport the natural mother and the child to Kansas City. Tr. 65.

Although the Respondents represented to the Circuit Court that the child’s father was unknown, L.F. 11, Respondents in fact testified that they knew Mr. Lentz was the alleged father prior to the hearing on February 25, 2005. Tr. 164. The record reveals that Mr. Lentz visited with the child while in foster care on

February 24, 2005, the day before Respondents filed their amended petition. Tr.

89. Mr. Lentz also sent gifts and money to Respondents for the child's care during these proceedings. Tr. 196.

The record does not support a finding that Mr. Lentz deserted the child or that he intended to permanently relinquish custody of the child. While the child was placed with foster parents for a few weeks Mr. Lentz continued to visit the child and provide support for the child. Tr. 116. Furthermore, Mr. Lentz was prevented from presenting additional evidence to defend against the termination of his parental rights due to abandonment because of the Circuit Court's limitation on evidence relevant to Mo. Rev. Stat. § 453.030. Pursuant to Mo. Rev. Stat. § 453.040(7), Mr. Lentz did not abandon the child. The Circuit Court erred in finding that Mr. Lentz had abandoned the child as the finding is against the weight of the evidence.

CONCLUSION

Mo. Rev. Stat. § 453.030 is unconstitutional in that it infringes on an unwed father's protected liberty interest in preventing the adoption of his child and it unjustifiably treats the rights of unwed fathers differently than the rights of mothers and married fathers. Mr. Lentz's protected liberty interest in his child was violated by the Circuit Court's application of Mo. Rev. Stat. § 453.030. The statute violates both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment and therefore should be struck down as unconstitutional.

In the alternative, the Circuit Court erred in the strict application of Mo. Rev. Stat. § 453.030 as a controlling statute and preventing Mr. Lentz from offering evidence of his commitment to the parent-child relationship he has with his child. The Circuit Court ignored the legal basis of paternity presented to the Court including a birth certificate, affidavit of acknowledgment of paternity, DNA test and testimony. By strictly applying only Mo. Rev. Stat. § 453.030, the Circuit Court failed to recognize the birth certificate under § 193.085 and the acknowledgment of paternity under § 210.823. The Circuit Court erred in finding that non-compliance with § 453.030 terminates Mr. Lentz's parental rights. Non-compliance is only a factor for the court to consider in the termination of parental rights. Mr. Lentz is entitled to a proper hearing on parental fitness in which he can present evidence of paternity to defend against the adoption of his child.

The Circuit Court also erred in finding that Mr. Lentz had abandoned the child pursuant to Mo. Rev. Stat. § 453.040 as it is against the weight of the evidence. The evidence show that Mr. Lentz visited his child and supported his child prior to the Circuit Court's temporary placement of the child with Respondents. The Circuit Court's judgment granting Respondent's Petition for Adoption must be reversed.

AFFIDAVIT OF SERVICE

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) SS.
County of _____)

The undersigned, having been duly sworn upon his/her oath, states that on the _____ day of _____, 2006, two copies of this Brief were mailed via first class mail, postage prepaid, to:

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My commission expires:

AFFIDAVIT PURSUANT TO MO.R.CIV.PRO. 84.06(c)

State of Missouri)
) SS.
County of _____)

The undersigned, having been duly sworn upon his oath, states that the above and foregoing Appellant's Brief:

1. Includes the information required by Mo.R.Civ.Pro. 55.03,
2. Complies with the limitations of Mo.R.Civ.Pro. 84.06(b) in that there exist approximately 8,029 words in 708 lines of text, and
3. A floppy disk that has been scanned for viruses pursuant to Mo.R.Civ.Pro. 84.06(g) was filed along with the brief.

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SUPREME COURT OF MISSOURI

| | | |
|---------------------|---|--------------------------------|
| M.T AND S.T, |) | |
| Respondents, |) | |
| v. |) | |
| |) | Supreme Court No. 87291 |
| |) | |
| CRAIG LENTZ |) | |
| Appellant, |) | |

**IN THE JACKSON COUNTY CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 41
Commissioner John Payne, Presiding**

| | | |
|-------------------------------|---|-------------------------------|
| In the Interest of: |) | |
| |) | |
| N.L.B, DOB: 12/12/2004 |) | Cause No. 0516-FC01293 |
| Minor Child. |) | |

APPENDIX TO BRIEF OF APPELLANT CRAIG LENTZ

Respectfully submitted,
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